IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1390 of 2004
in
SPECIAL CIVIL APPLICATION No 7625 of 2004
with
CIVIL APPLICATION No 9613 of 2004
with
CIVIL APPLICATION No 5258 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIKANDER RASULBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance: 1. LETTERS PATENT APPEAL No. 1390 of 2004
MR BIPIN I MEHTA for Appellant No.
MR HD DAVE AGP for Respondent No. 1
MR DEEPAK P SANCHELA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 10/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-petitioner challenged the impugned transfer order "Annexure-D" transferring him from Dahod to Keshod on two grounds that; (i) due to political interference and (ii) with a view to accommodate one Mr.Ashwin Pathak. Though serious allegations were made against the sitting local M.L.A., Mr.Madhabhai Boricha in the writ petition, the appellant-petitioner has not joined him as party respondent. Hence, his challenge on these grounds cannot be entertained.

#. It is true that in the impugned order of transfer it is stated that Mr.Pathak is transferred on his own request, but likewise one Mr.H.A.Shah at Sr. No.5 in the common order of transfer at "Annexure-D" was also transferred on his request. That apart, the appellant-petitioner has not even thought it fit to join Mr.Ashin Pathak as party respondent in this petition.

#. Observing that the appellant-petitioner was not qualified to be appointed as Chief Engineer of the municipality, Her Lordship had dismissed the petition summarily without issuing notice to the other side by observing that a person, who is on deputation has no right to continue on a deputation post.

#. Dismissal order dated 5.7.2004 passed by the learned Single Judge of this court dismissing his Special Civil Application No.7625/04 is challenged in this appeal. Straightaway it was admitted by Hon'ble First Court on 12.7.2004 and by a brief reasoned order, Their Lordships granted interim relief in faovur of the appellant-petitioner. For vacating the same above Civil Application No.9613 of 2004 is filed. Decision on the Civil Application governs his main Letters Patent Appeal, therefore, we have thought it fit to dispose of the main Letters Patent Appeal itself instead of deciding the Civil Application for stay.

#. Having heard learned counsel for the parties and having perused the averments made in the writ petition as well as the appeal filed by the appellant-petitioner and the averments made in the above Civil Application, we are of the clear opinion that no interference is called for against the order dated 5.7.2004 passed by the learned Single Judge dismissing Special Civil Application of the

appellant-petitioner in limine filed against his order of transfer.

#. It is true that prima facie at the time of admission of this appeal and the Civil Application, Their Lordships of the Division Bench found that the transfer was due to political reasons with a view to accommodate Mr.Ashwin Pathak. But in view of the averments made in the Civil Application it has now become clear that it was purely an administrative order and challenge to the transfer on the ground of political interference without joining the concerned local M.L.A. would not be maintainable. Similarly, allegation to accommodate Mr.Pathak, the appellant-petitioner was shifted is also baseless, more particularly, when Mr.Pathak is also not joined as party respondent.

#. In view of the above, we are of the considered opinion that it was a mere incident of service and when the appellant-petitioner was transferred along with 25 persons by a common order, then such an order cannot be interfered in light of the several judgments of the Hon'ble Supreme Court.

#. At this stage, a request was made by Mr.Mehta for the appellant to allow the appellant-petitioner to complete his period of deputation, which is going to be expired at the end of this year. For this he can always make proper representation to the State Government, as observed by the learned Single Judge while dismissing his writ petition.

#. In view of the above discussion, this appeal fails and is hereby dismissed. Civil Application No.5258 of 2004 for stay is dismissed as the main Letters Patent Appeal is dismissed.

##. In view of the dismissal of Civil Application No.5258 of 2004, no further order is required to be passed on Civil Application No.9613/04 filed by the applicant-original respondent No.1-State of Gujarat for vacating ex parte interim relief. Accordingly, Civil Application No.9613 of 2004 is also disposed of.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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